

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90
)	

**REPLY COMMENTS OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA
CORPORATION COMMISSION**

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) hereby submits these reply comments in response to various issues raised by parties providing comments in response to the Second Further Notice of Proposed Rulemaking (“Second FNPRM”) released by the Federal Communication Commission (“FCC” or “Commission”) on June 22, 2015.

Summary

PUD provides these reply comments for purposes of correction and clarification of statements made in the comments of the Lifeline Joint Commenters¹ and the additional comments provided jointly by Assist Wireless, LLC (“Assist Wireless”) and Easy Telephone Services Company d/b/a Easy Wireless (“Easy Wireless”) which are specific to the Lifeline program in Oklahoma.

¹ Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation (collectively, the Lifeline Connects Coalition), and American Broadband & Telecommunications Company, Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC, TAG Mobile, LLC, Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect) and Total Call Mobile, Inc.

The Lifeline Joint Commenters characterize the regulatory efforts of the Oklahoma Corporation Commission (“OCC”) with regard to the Lifeline program as “one of the most extreme examples of state over-regulation...”² The Lifeline Joint Commenters take issue with a variety of the OCC’s rules, notably regarding mobile marketing requirements, minimum service standards, documentation retention and notification requirements. Contrary to the opinion of the Lifeline Joint Commenters, PUD, as discussed below, believes the OCC’s rules have been instrumental in protecting Lifeline consumers in Oklahoma and have served to drastically reduce waste, fraud and abuse within the Lifeline program.

Assist Wireless and Easy Wireless assert that there are no facilities-based wireless ETCs in Oklahoma. This is not accurate. As discussed below, there are multiple facilities-based wireless ETCs providing Lifeline service in Oklahoma. Assist Wireless and Easy Wireless also make unsupported allegations that the OCC inappropriately “shields rural incumbent wireline carriers from competition in the provision of Lifeline services...”³ PUD objects to this mischaracterization. First, it is rare that a wireless reseller will seek ETC designation in a rural study area. Selective choice of where to seek designation by any applicant does not translate to some imagined protectionism of rural study areas by the OCC. Second, there is a higher public interest showing required for designation as an ETC in a rural study area, a requirement which PUD applies consistently in its analysis of applications for ETC designation, as well as a requirement to serve throughout the entire rural study area. Here again, neither the existence of these additional requirements nor an applicant’s choice to not submit to these additional

² See *Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program* (“Lifeline Joint Commenters Comments”), filed August 31, 2015, page 11

³ See *Comments of Assist Wireless, LLC and Easy Telephone Services Company d/b/a Easy Wireless on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program* (“Assist and Easy Comments”), filed August 31, 2015, page 2.

requirements can be construed as any type of shielding of rural study area from competition for Lifeline service. Assist Wireless and Easy Wireless further allege that wireless resellers in Oklahoma are “restricted by the Oklahoma Commission from serving most non-Tribal areas.”⁴ PUD would note that the service territory for which an eligible carrier seeks ETC designation and for which designation can be granted is not defined, or otherwise restricted, based on whether or not that service territory is defined as “Tribal” or “non-Tribal.” This allegation is also unsupported.

Finally, PUD offers additional comment on the redefinition of Tribal lands in Oklahoma and the ongoing consultations with Tribal governments.

I. Lifeline Joint Commenters Assert OCC Rules Are An Example of State Over-Regulation

PUD would argue that the rules about which the Joint Commenters complain were developed and adopted in response to real and significant problems that were being observed in the Lifeline program within Oklahoma. This included such things as consumers being unable to identify exactly who their Lifeline service provider actually was, let alone how to reach that carrier or how to have a problem resolved; Lifeline wireless handsets showing up at crime scenes and drug busts; Lifeline services being marketed and sold out of car trunks at the side of the road and consumers easily acquiring multiple wireless handsets activated for Lifeline service and then selling those handsets to anyone willing and able to come up with the requisite amount of cash.

As ETCs in Oklahoma and the FCC are aware, Oklahoma is uniquely situated as it relates to the availability of the enhanced Tribal support afforded under the Lifeline program. Due to the definition of Tribal lands applicable to Oklahoma, the vast majority of subscribers reside on Tribal lands, thus making the support level for such subscribers \$34.25 per month, rather than the

⁴ See Assist and Easy Comments, page 8, fn 10.

non-Tribal support of \$9.25 per month. The availability of the enhanced Tribal support for such a significant amount of the eligible population makes Oklahoma an attractive market within which to offer Lifeline service. Accordingly, Oklahoma has been at the epicenter of the waste, fraud and abuse that has plagued the Lifeline program.

The OCC's rules and efforts to monitor the activities of ETCs in Oklahoma have had a significant impact in reducing waste, fraud and abuse as well as providing protections for the consumer. Notably, ICON Telecom, Inc. was a wireless ETC in Oklahoma that, in conjunction with a show cause and enforcement action⁵ brought by PUD, relinquished its ETC designation in Oklahoma.⁶ ICON Telecom, Inc. and its owner, Wesley Chew, were ultimately charged with money laundering and false statements in conjunction with the fraudulent activities ICON Telecom, Inc. engaged in with the federal Lifeline program.⁷ Of course, PUD recognizes that ICON Telecom, Inc.'s actions are not representative of all ETCs in Oklahoma, but the rules and requirements put in place by the OCC encourage a level of performance and compliance from ETCs that significantly mitigate the opportunity for a similar situation to occur in Oklahoma. Further, PUD would argue that continued vigilance and oversight is required, as opportunities for problematic activities by ETCs in the market still exist. For instance, a wireless ETC recently requested waiver of the OCC's mobile marketing rules⁸ in order to allow this company's agents to distribute Lifeline phones from backpacks as they walk around an area such as a public park. PUD did not support the requested waiver, as such a distribution methodology would be a step backward to situations where the provider's identity and enrollment processes were either

⁵ See Cause No. PUD 201300018, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Public Utility Division of the Oklahoma Corporation Commission for a Show Cause Hearing Against ICON Telecom, Inc.* filed February 14, 2013. See also Cause No. EN 201300076, *Complaint, Information, Summons, and Notice of Citation for Contempt*, filed August 13, 2013.

⁶ See Cause No. PUD 201300167, *In the Matter of the Notification of ICON Telecom, Inc. of Voluntary Relinquishment of ETC Designations*, filed September 17, 2013.

⁷ See *U.S. v. Chew*, No. CR-14-170-D (W.D. OK, 2014 WL 8108217)

⁸ OAC 165:55-23-16 Limitations on Marketing of Supported Services by ETCs

unknown or haphazard. Absent the OCC's mobile marketing rules, this distribution methodology, which history indicates would likely open the process to waste, fraud and abuse, would likely be implemented and, depending on the number of customers enrolled, replicated by other ETCs.

Contrary to the Joint Commenter's view that the rules in Oklahoma represent "over-regulation", PUD believes that the OCC's rules have been beneficial to the Lifeline program by encouraging processes and procedures by ETCs in Oklahoma that minimize waste, fraud and abuse. Further, the consumer of Lifeline services is another significant beneficiary of the OCC's rules. PUD now rarely hears from consumers unable to identify their Lifeline providers or who have no understanding of the Lifeline program and the benefit that they are receiving. Finally, the OCC's rules and PUD's efforts in auditing and investigating activities in Oklahoma have allowed PUD to be an active partner with the FCC as it engages in efforts to minimize waste, fraud and abuse in the Lifeline program. PUD asserts that the costs associated with regulatory compliance activities in Oklahoma are not excessive, particularly when compared to the potential for waste, fraud and abuse in the Lifeline program.

II. Lifeline Joint Commenters Misrepresent OCC's ETC Designation Process

In discussing their view of the OCC's implementation of minimum service standards for Lifeline service, the Joint Commenters assert that the "Oklahoma Corporation Commission does not authorize competitive ETCs to serve most areas that had been designated as non-Tribal in the state."⁹ This is inaccurate as the party ultimately in control of the area for which ETC designation is granted is the applicant, not the OCC. If the applicant does not seek ETC designation in a particular service territory, the OCC does not give consideration to those un-

⁹ See *Lifeline Joint Commenters Comments*, filed August 31, 2015, page 11, footnote 18.

requested areas and, as one would expect, does not grant designation if there is no request. Further, ETC designation is not granted on a Tribal vs. non-Tribal basis. PUD would note that the vast majority of wireless reseller applicants request designation as an ETC in those non-rural areas served by Southwestern Bell Telephone Company d/b/a AT&T Oklahoma (“AT&T Oklahoma”) and Valor Telecommunications of Texas, L.L.C. d/b/a Windstream Communications Southwest (“Windstream Southwest”). PUD would further note that there are non-Tribal areas within the AT&T Oklahoma and Windstream Southwest service territories.¹⁰ Accordingly, it is simply inaccurate to say or otherwise imply that the OCC does not authorize competitive ETCs “to serve most areas that had been designated as non-Tribal in the state.” This will be discussed further below.

PUD would also reply to the position advanced by the Lifeline Commenters that the Commission, rather than establishing minimum service standards, should maximize competition and minimize regulation in order to ensure that consumers receive “good value” in the Lifeline services they choose.¹¹ As PUD explained in its initial comments, in the unique Lifeline market, more providers, particularly when it comes to wireless reseller ETCs, alone does not ensure improvements in the value of the services offered.¹²

III. Assist Wireless and Easy Wireless Comments Erroneously Assert That There Are No Facilities-Based Wireless Lifeline Providers With Customers in Oklahoma

In their comments, Assist Wireless and Easy Wireless state that “No facilities-based wireless provider currently has Lifeline subscribers in the state.”¹³ Assist Wireless and Easy

¹⁰ There will be a significant increase in the amount of non-Tribal areas that are within the AT&T Oklahoma and, to a lesser degree, Windstream Southwest service territories as a result of the FCC’s adoption of a new map for purposes of defining Tribal lands in Oklahoma (See *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*, released June 22, 2015, ¶260).

¹¹ See *Lifeline Joint Commenters Comments* filed August 31, 2015, page 4.

¹² See *Comments of the Public Utility Division of the Oklahoma Corporation Commission*, filed August 31, 2015, pages 2-4.

¹³ See *Assist and Easy Comments*, page 2.

Wireless further assert that “Not a single line is served by a facilities-based wireless carrier.”¹⁴

These assertions are untrue. At this time in Oklahoma there are eleven (11) wireless facilities-based ETCs.¹⁵ A review of Universal Service Administrative Company (“USAC”) disbursement information shows that these entities, in the aggregate, have received just under one million dollars of federal low-income support for the first half of 2015, proving that there are Oklahoma Lifeline customers being served by wireless facilities-based ETCs.

These erroneous statements seem to be tied to the Assist Wireless and Easy Wireless position that “The Lifeline program is not an infrastructure program.”¹⁶ This is inconsistent with the FCC’s discussion of the goals of the Lifeline program on Tribal lands, particularly in light of the FCC’s *2000 Tribal Order*, in the Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, released June 22, 2015 at ¶161. There the FCC notes that “The Commission stated that the additional support might provide Lifeline providers an incentive to ‘deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable’ and also to attract needed financing of facilities on Tribal lands.” While the Lifeline program is not exclusively an “infrastructure program,” it is improper to extrapolate from that to a position that there should be no consideration of the impact of Lifeline support on facility deployment on Tribal lands or how such support could provide incentive for the deployment of facilities.

¹⁴ *Id.*, page 20

¹⁵ Cellular Network Partnership d/b/a Pioneer/Enid Cellular (Cause No. PUD 201200042, Order No. 601260); Cherokee Telephone Co. (Cause No. PUD 201100172, Order No. 594685); Cross Wireless, LLC d/b/a Sprocket Wireless, LLC (PUD 200500437, Order No. 526547); Cross-Valiant Cellular Partnership (PUD 200600058, Order No. 526549); Epic Touch Co. (Cause No. PUD 200300087, Order No. 494933); GCC License Corp. (Western Wireless) (Cause No. PUD 199800470, Order No. 450765); Lakeland Cellular (Cause No. PUD 201000005, Order No. 588760); Oklahoma Western Telephone Co. d/b/a OWTC Cellular (Cause No. PUD 200600224, Order No. 534479); Panhandle Telecommunications Systems, Inc. (Cause No. PUD 200300690, Order No. 495563); Pine Cellular Phones, Inc. (Cause No. PUD 200400629, Order No. 501836); US Cellular Corp. (Cause No. PUD 200300195, Order No. 495563). Many of these entities have multiple causes as they, over time, have requested designation in additional service areas.

¹⁶ See *Assist and Easy Comments*, page 4.

IV. Assist Wireless and Easy Wireless Comments Allege OCC Restricts ETC Designation Process

Assist Wireless and Easy Wireless state that “Further, because the Oklahoma Corporation Commission (Oklahoma Commission) shields rural incumbent wireline carriers from competition in the provision of Lifeline services to eligible consumers, competitive ETCs, such as Assist and Easy, are not authorized to provide service in most of the area presently designated as non-Tribal in Oklahoma.” This allegation is unsupported. The OCC processes applications for ETC designation consistent with 47 U.S.C. §214(e), 47 CFR §54.101, 47 CFR §54.201, 47 CFR §54.202 and 47 CFR §54.207 and relevant FCC orders and does so in a non-discriminatory manner.¹⁷ The only significant difference in processing between applications for ETC designation in non-rural service territories and rural study areas is the statutory requirement of 47 U.S.C. §214(e)(2) which directs that “Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.” As stated earlier, it has been PUD’s experience that most wireless resellers do not want to seek ETC designation in rural study areas. Of course, the OCC does not grant ETC designation for service areas that have not been requested.

With that, the real reason that many competitive ETCs, such as Assist Wireless and Easy Wireless, are not designated as ETCs in rural study areas is that they have not chosen to request designation in those areas and put up the required public interest demonstration. Further, both Assist Wireless and Easy Wireless, as ETCs in the non-rural AT&T Oklahoma and Windstream

¹⁷ Once again, whether or not an area for which ETC designation is requested consists of Tribal or non-Tribal lands does not have any bearing on the processing or standards for granting ETC designation.

Southwest service territories, do serve non-Tribal areas. There are currently seven (7) counties in Oklahoma that are defined as non-Tribal. Of those seven, three (3), Greer, Jackson and Beckham counties contain AT&T Oklahoma service territories. PUD would also note that it has never received notice from either Assist Wireless or Easy Wireless that they were engaging in mobile marketing activities in any communities in these non-Tribal areas.¹⁸ Here again, it would appear to be a matter of choice, rather than some imagined OCC barrier, as to how these ETCs approach their participation in the current non-Tribal lands.

V. Redefinition of Tribal Lands / Consultation with Tribal Governments

PUD, in its initial comments, supported an extension of the transition period beyond the current 180 days so that the FCC can ensure that there is a fully operational electronic system available that would depict the new boundaries and allow consumers, providers and regulators to know with specificity whether or not any particular address is on Tribal or non-Tribal lands. PUD would re-emphasize the importance of having this tool in place and fully operational well in advance of the implementation of the new boundaries. Again, if this tool is not available and functional, an extension of the transition period must be adopted.

PUD also recognizes the interest that the Tribal Nations have in this upcoming change, particularly as articulated in *The Inter-Tribal Council of the Five Civilized Tribes, A Resolution to Preserve the Universal Service Fund Lifeline and Link Up Programs, Resolution No. 15-21, WC Docket No. 11-42*, filed August 13, 2015. PUD has also had conversations with other Tribes such as Citizen Potawatomi Nation, which also express their concern with the impact of the adoption of the Oklahoma Historical Map. Given these articulated concerns, PUD also supports an extension of the 180-day transition period for the purpose of allowing the FCC and the Tribal

¹⁸ OAC 165:55-23-16(b)(9) requires ETCs to provide PUD with a list of all locations where mobile marketing is to take place.

Nation to fully engage on this change and to accommodate any potential adjustments that could result from such discussions.

At this point, PUD is moving forward with preparations for implementation of the boundary changes and has opened a Notice of Inquiry within which to take comment on the necessary operational changes to support the FCC's redefinition of former reservations in Oklahoma¹⁹, the main focus of the Notice of Inquiry is how to identify the Tribal and non-Tribal lands under the new definition and what appropriate consumer outreach efforts should be undertaken by ETCs and the OCC.

Conclusion

PUD would ask the Commission to reject the position of the Lifeline Joint Commenters that the rules and regulations adopted by the OCC for Lifeline service in Oklahoma are an example of state over-regulation. Rather, the Commission should recognize that the OCC's rules were borne out of a need to curb waste, fraud and abuse in the Lifeline program in Oklahoma and that those rules have been very effective.

PUD would also ask the Commission to disregard the erroneous statement of Assist Wireless and Easy Wireless that there are no facilities-based wireless ETCs in Oklahoma serving Lifeline customers. As demonstrated above, this is simply not true. Additionally, PUD categorically rejects the unsupported allegations of Assist Wireless and Easy Wireless that the OCC has engaged in any protectionist type activities in the granting of ETC designations. The Commission should do the same.

¹⁹ *Cause No. PUD 201500350*, filed September 24, 2015. Comments are due October 12, 2015, a Technical Conference will be held October 28, 2015 and a hearing on November 17, 2015.

Finally, PUD reiterates its position that the 180-day transition period must be extended if an electronic tool or methodology with which to determine whether a specific address is on Tribal or non-Tribal lands is not available well in advance of the effective date of the boundary change. Additionally, PUD believes it would be reasonable to extend the transition period in order to accommodate any discussions or engagement with all of the Tribal Nations in Oklahoma that are impacted by the boundary change, as well as any alterations or changes that could result from those efforts.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Kimberly C. Prigmore", is written over a horizontal line.

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